IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is approved
for reporting or not)
[(Chapter VIII Rule 32 (2)(b)]

Description of Case

Writ Petition No. 795 (S/S) of 2003

Hari Ballabh Purohit
son of late Sri Bhawani Datt Purohit,
posted as Cooperative Inspector Group – I,
in the office assistant Registrar,
Cooperative Societies, Dehradun. **... … …Petitioner.**

V e r s u s.

1. State of Uttaranchal through Secretary, Cooperative Department, Uttaranchal Shashan, Dehradun.
2. Registrar, Cooperative Societies, Uttaranchal Dehradun.
3. Additional Registrar, Cooperative Societies Uttaranchal, Almora Camp, Dehradun.
4. Registrar, Cooperative Societies, U.P., Lucknow.

……Respondents.

Approved for reporting.

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~~Not approved for reporting~~.

Date of Decision August 18, 2005

Initial of Judge

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(Judgement Reserved)

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4. Registrar, Cooperative Societies, U.P., Lucknow.

…….Respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Manoj Tiwari, learned counsel for the petitioner learned standing counsel for the State of Uttaranchal, who has accepted notices on behalf of respondents no. 1 to 3 and learned standing counsel for the State of Uttar Pradesh, who has accepted notice on behalf of respondent no. 4.

Learned counsel for both the parties are agree to decide the present writ petition at its admission stage itself.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Mandamus commanding the respondent no. 2 i.e. Registrar, Cooperative Societies,

Uttaranchal, Dehradun to consider and promote the petitioner as Cooperative Inspector Group – I, with effect from 16.01.1989 when the persons juniors to him were promoted and to consider and promote the petitioner as Assistant Registrar, Cooperative Societies with effect from 02.11.1999 when the juniors to the petitioner have been promoted. The petitioner has further prayed to direct the respondents to pay all consequential monetary benefits to the petitioner.

The submission of the petitioner is that he was appointed on regular basis on the post of Supervisor in Cooperative Department against the substantive vacancy with effect from 02.02.1966 and was promoted as Cooperative Inspector Group – II / Assistant Development Officer (Cooperative) in the pay scale of Rs. 280 – 460 vide order dated 25.01.1977 passed by Deputy Registrar, Cooperative Societies, Garhwal Region, Pauri, against a vacancy in the promotion quota. In pursuance to the order 25.01.1977, petitioner joined his duties on the promoted post on 31.01.1977.

Vide order dated 08.09.1978 passed by the Deputy Registrar, Cooperative Societies, U.P. Pauri Garhwal, petitioner was appointed as Managing Director, Krishak Sewa Sahakari Samiti Ltd. Bhaniawala on deputation. The said appointment was made in anticipation of approval by Registrar, Cooperative Societies, U.P. The petitioner joined the post of Managing Director, Krishak Sewa Sahakari Smiti Ltd. Bhaniawala on 22.09.1978.

The approval to the said appointment on deputation by the Registrar, Cooperative Societies was granted from the date of joining of the petitioner on the post of Managing Director,

Krishak Sewa Sahakari Samiti Ltd. Bhaniawala i.e. from 29.05.1979. Initially, the petitioner was sent on deputation for the period of one year but the said period was extended by the Registrar from time to time vide orders dated 18.08.1980, 17.09.1982 and 30.01.1983. Vide order dated 24.12.2001 passed by the Registrar, Cooperative Societies, Uttaranchal petitioner was promoted to the post of Cooperative Inspector Group – I. He joined his duties on the promoted post on 29.12.2001.

The services of the Cooperative Supervisor, Assistant Cooperative Inspector are regulated by the Statutory Rules known as U.P. Cooperative Department Group III Subordinate Services Rules, 1977, which were notified on 16.11.1977. The petitioner was promoted as Cooperative Inspector Group – II vide order dated 25.01.1977 i.e. before enforcement of the said aforesaid Rules. Government framed another set of Rules known as The Subordinate Cooperative Services Rules 1979, which were notified on 14.05.1979. Rule 5 of the said Rules provides the source of recruitment to the post of Cooperative Inspector Group – I as well as Cooperative Inspector Group – II. According to the rules, 50 per cent of the total posts of Cooperative Inspector Group – I shall be filled by way of direct recruitment and remaining 50 per cent post shall be filled by promotion. In respect to Cooperative Inspector Group – II, 34% posts are to be filled by way of promotion and 66% of the posts are to be filled by way of direct recruitment. At the time of implementation of this rules i.e. on 14.05.1979 petitioner was already holding the post of Cooperative Inspector Group – II as he was promoted to the post of Cooperative Inspector Group – II on 25.01.1977.

The submission of the petitioner is that juniors to the petitioners have been promoted to the post of Cooperative Inspector Group – I. In para 9 of the writ petition the petitioner has mentioned the name of the person i.e. Harish Chandra Singh Rawat, who was junior to him and was promoted to the post of Cooperative Inspector Group – I ignoring the claim of the petitioner though he was senior to the him. The petitioner was much senior to Sri Harish Chandra Singh Rawat.

The submission of the petitioner is that though he was promoted as Cooperative Inspector Group – II vide order dated 25.01.1977 and has joined his duties on 31.01.1977. Sri Harish Chandra Singh Rawat, who was appointed as Cooperative Inspector Group – II with effect from 10.02.1980 was promoted to the post of cooperative Inspector Group – I with effect from 24.07.1972. Sri Rawat was subsequently given regular promotion to the post of District assistant Registrar, Cooperative Societies, vide order dated 02.11.1999. In para 12 of the writ petition, it has been stated that Sri Umrao Singh Saini, Sri Mohd. Vidir and Sri Avdesh Narain Tripathi, who were appointed through direct recruitment as Cooperative Inspector group – II in the year 1980 have been given promotion form time to time ignoring the claim of the petitioners which is absolutely arbitrary and illegal. The criteria for promotion for the post of Cooperative Inspector Group – I as well as for the post of District Assistant Registrar, Cooperative Societies is seniority subject to rejection of unfit. The work and performance of the petitioner has always been found good. There is no complaint form any quarter against him. He has never been given any warning, or show cause

notice, or any adverse entry or chargesheet was communicated to him as such, he possesses unblemished service record to his credit and as such, denial of promotion to the petitioner at the time when junior to him have been promoted is absolutely arbitrary and illegal.

The petitioner has further submitted that one Sri Harbilas Upreti, who was initially appointed as Supervisor in cooperative department on 01.09.1966 was promoted to the post of Cooperative Inspector Group – II vide order dated 23.05.1978.

Sri Upreti filed writ petition no. 204 (SS) of 2000 with a prayer to issue a writ in the nature of Mandamus commanding the respondents to consider and promote him to the post of Cooperative Inspector Group – 1 from the date when juniors to him were promoted. This court on 16.01.2002, while allowing the writ petition of Sri Hari Bilas Upreti directed the respondents to consider the case of the Sri Hari Bilas Upreti for the post of Cooperative Inspector Group – I and Assistant Registrar, Cooperative Societies from the date when juniors to him have been promoted and has further directed to grant him all consequential benefits within a period of one month from the date of production of certified copy of the order.

Learned counsel for the petitioner has submitted that in pursuance to the order passed by this court on 16.01.2002 in writ petition no. 204 (SS) of 2000, Registrar, Cooperative Societies, Uttaranchal vide order dated 21.03.2002 passed an order granting promotion to Sri Hari Bilas Upreti on the post of Cooperative Inspector Group – I with effect from 16.01.1989 and was granted further notional promotion on the post of

Assistant Registrar, Cooperative Societies, with effect from 02.11.1999 the date on which juniors to Sri Upreti were promoted.

The controversy raised in the present writ petition is similar to the controversy raised by Sri Hari Bilas Upreti in writ petition no. 204 (SS) of 2000. In case of Sri Hari Bilas Upreti, he was appointed as Supervisor, in the Cooperative Department, on 07.01.1966 and was promoted to the post of Cooperative Inspector Group – II on 23.05.1978, whereas juniors to him Sri Harish Chandra Singh Rawat, Sri Umrao Singh Saini, Sri Mohd. Vidir and Sri Avdesh Narain Tripathi, who were appointed in the year 1980 as Cooperative Inspector Group – Ii in pursuance to the order passed by this court in writ petition no. 204 (SS) of 2004, Sri Hari Bilas Upreti was granted promotion to the post of Cooperative Inspector Group – I vide order dated 16.01.1989 and thereafter, promoted to the post of Assistant Registrar, vide order dated 02.11.1999.

The petitioner was also appointed as Supervisor, on 01.09.1996 and was promoted to the post Cooperative Inspector Group – II on 23.05.1978. It is not disputed that persons like Sri Harish Chandra Singh Rawat, Sri Umrao Singh Saini, Sri Mohd. Vidir and Sri Avdesh Narain Tripathi were appointed directly on the post Cooperative Inspector Group – Ii in the year 1980 and have been promoted to the post of Cooperative Inspector Group – I and Sri Rawat was further promoted to the post of Assistant Registrar, Cooperative Societies whereas the petitioner, who was promoted against the substantive vacancy as Cooperative Inspector Group – II in the year 1978, has been denied promotion. The seniority of the promotee should have been

counted from the date of his promotion, if the vacancy in the quota to be filled by promotion is available at the time of promotion and as such, the petitioner's seniority on the post of Cooperative Inspector Group – II should have been counted from 23.05.1978, the date on which he was promoted as Cooperative Inspector Group – II.

Respondents have filed counter affidavit. In the counter affidavit, respondents have not denied that the petitioner was appointed as Cooperative Supervisor on 01.09.1966 and was promoted to the post of Cooperative Inspector Group – II on 23.05.1978. It is also not denied by the respondents that Sri Harish Chandra Singh Rawat, Sri Umrao Singh Saini, Sri Mohd. Vidir and Sri Avdesh Narain Tripathi were appointed as Cooperative Inspector Group – II in the year 1980 and these persons, who alleged to have been juniors to the petitioner, were promoted to the post of Cooperative Inspector Group – I and thereafter, some of them have been granted promotion to the post of Assistant Registrar, Cooperative Societies. The stand taken by the respondents is that petitioner did not raise any grievance in this regard at the relevant time and has filed the writ petition after a long gap. The second submission made by the respondents in the counter affidavit is that petitioner ahs not impleaded the persons alleged to have been promoted in spite of the fact that they were juniors to the petitioner.

I am not impressed with the statement made in the counter affidavit and argument advanced by the respondents that the petitioner ahs not challenged the promotion order of the persons, who alleged to have been juniors to the petitioner. The petitioner has sought the relief to this extent only that he

may also be provided promotion form the date when juniors to him have been promoted. The department cannot justify its mistake by taking a stand that though the petitioner was senior to other persons who have been promoted and there was nothing against him which disqualifies him to be promoted shall not be promoted because he has not raised his grievance earlier.

Almost similar situated persons Sri Hari Bilas Upreti was granted notional promotion to the post of Cooperative Inspector Group – I with effect from 16.01.1989 and as Assistatn Registrar, with effect from 02.11.1999 vide order dated 24.05.2002. Petitioner has made representation on 17.07.2002 which was not considered by the respondents and consequently, the petitioner ahs filed the present writ petition on 07.07.2003.

It is stated in para 12 of the counter affidavit that promotion of Sri Harish Chandra Singh Rawat and others on the post of Cooperative Inspector Group – I and thereafter, on the post of Assistant Registrar was given in accordance with law and without hearing the promotee the claim of the petitioner on the basis of parity cannot be considered and allowed by this court.

I don't find any force in the submission of the learned standing counsel. It is further submitted by the respondents that the petitioner is junior to Sri Hari Bilas Upreti and as such, he cannot take parity with the case of Sri Hari Bilas Upreti. In para 5 of the counter affidavit it is stated that no person junior to petitioner has ever been promoted on the aforesaid dates or any other date.

The submission made in the counter affidavit is not supported by any document. Respondents have not denied that Sri Harish Chandra Singh Rawat and others were appointed on the post of Cooperative Inspector Group – II in the year 1980 and they were promoted to the Cooperative Inspector Group – I and thereafter, promoted on the post of Assistant Registrar, Cooperative Societies.

It is not disputed that petitioner was promoted to the post of Cooperative Inspector Group – II vide order dated 23.05.1978. From this fact it is established that juniors to the petitioner have been promoted ignoring the claim of the petitioner.

For the reasons stated above, writ petition is allowed. Respondents shall consider the case of the petitioner or promotion to the post of Cooperative Inspector Group – I and Assistant Registrar, Cooperative Societies from the date when juniors to him have been promoted on the aforesaid post with all consequential benefits. No order as to costs.

(M.M. Ghildiyal, J.)

August 18, 2005
SKSharma

Writ Petition No. 795 (SS) of 2003

Hon'ble M.M. Ghildiyal, J

Connection Application No. 6344 of 2005

Heard Sri Alok Mehra, holding brief of Sri Manoj Tiwari, learned counsel for the petitioner and learned standing counsel.

Correction application is allowed.

Let the necessary correction be made in the judgement and order dated 18.08.2005 passed by this court:

In the array of party, name of petitioner "Hari Ballabh Pant" be substituted "Hari Ballabh Purohit"

31.08.2005 **(M.M. Ghildiyal, J.)**

S.K.S